
In the Supreme Court of the United States

OCTOBER TERM 1944.

No. 342.

In the Matter of
THE HIGBEE COMPANY, *Debtor* } BANKRUPTCY No. 36,119.

ROBERT R. YOUNG,
Petitioner,

VS.

THE HIGBEE COMPANY,
WILLIAM W. BOAG and
J. F. POTTS,
Respondents.

REPLY BRIEF OF PETITIONER.

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The brief of Respondent Potts raises two questions for consideration by this Court.

FIRST, It is said that Bradley and Murphy paid the inflated price to Potts because of developments which occurred in other litigation to which Young was a party.

The fiduciary relationship arose when Potts made representations and gave assurances to the court and the preferred stockholders. The circumstances or motives which later impelled Bradley and Murphy to negotiate to acquire Potts' stock, and thus persuade him to ignore his earlier representations and assurances, could not provide any justification for Potts to violate the obligations incident to the relationship which had been created. In

fact the more valuable Potts' position became, the more strict should have been his observance of the rules and principles relating to fiduciary faithfulness.

SECOND, It is said that because the courts below found that Potts and his colleague Boag were acting only on their own behalf this Court cannot give relief.

At page 3 of the Petition for Writ, Petitioner agreed with the findings that Potts and Boag were acting for themselves only. It is abundantly clear that all of their activity throughout the reorganization proceedings was for the sole purpose of fostering their own selfish interests despite their oft repeated statements to the contrary. Had they been sincere when they announced in court to all concerned that they were representing the preferred stockholders as a class, they would have voluntarily turned over the proceeds of the litigation to the class.

Petitioner here is merely seeking to require Potts to live up to his own solemn representations—both spoken and written.

May an attorney appear in a bankruptcy proceeding asserting that he represents a class of stockholders, and at the last minute—when it suits his pocketbook—change his position and claim to be representing himself only, thereby to retain the proceeds of a final settlement of litigation? That is the question which will be presented if the Petition for a Writ is granted. It is a question of the conduct of parties in a bankruptcy proceeding—parties over whom the Federal Court has unquestioned jurisdiction. Trafficking in litigation by members of a stockholders' committee and their attorney is a matter of importance to the administration of bankruptcy proceedings everywhere.

WHEREFORE Petitioner respectfully requests the issuance of a Writ of Certiorari as prayed in the Petition.

Respectfully submitted,

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(Note: Since the filing of the Petition for Writ of Certiorari, the order of the Circuit Court of Appeals has been published and appears at 142 Fed. (2) 1004.)